

Exhibit 26 to Plaintiff's  
Memorandum of Points and Authorities  
in Support of Its Motion for Temporary  
Restraining Order and Preliminary Injunction  
(PX01326)

Cited Portions of the Exhibit are Excerpted

1 FEDERAL TRADE COMMISSION

2 I N D E X

3

4 WITNESS:

EXAMINATION:

5 EDMUND LAMACCHIA

6 BY MR. BLOOM

5

7

8

9 EXHIBITS

DESCRIPTION

FOR ID

10 None

11

12

13 OTHER EXHIBITS REFERENCED

PAGE

14 PX00204

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15 PX00228

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16 PX00239-001

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1 FEDERAL TRADE COMMISSION

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4 WHOLE FOODS MARKET, INC., )

5 a corporation, )

6 and ) File No. 0710114

7 WILD OATS MARKETPLACE, INC., )

8 a corporation. )

9 -----)

11 Wednesday, April 11, 2007  
12  
13 Room 6201  
14 Federal Trade Commission  
15 601 New Jersey Avenue, N.W.  
16 Washington, D.C. 20580

18                   The above-entitled matter came on for  
19       investigational hearing, pursuant to notice, at  
20       8:15 a.m.

21  
22  
23  
24  
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For The Record, Inc.  
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10 ALSO PRESENT:

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1 P R O C E E D I N G S

2 - - - - -

3 Whereupon--

4 EDMUND LAMACCHIA

5 a witness, called for examination, having been first  
6 duly sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. BLOOM:

9 Q. Good morning, Mr. LaMacchia.

10 A. Good morning.

11 Q. Again, my name is Michael Bloom. Let me just  
12 start by asking you to say your full name and spell it  
13 for the reporter, please.

14 A. Okay, Edmund, E D M U N D, LaMacchia, L A M A C  
15 C H I A.

16 Q. Have you ever appeared in a judicial proceeding  
17 or been deposed?

18 A. In a work -- Workers Comp -- Compensation  
19 hearing.

20 Q. And were you deposed before?

21 A. I was deposed there.

22 Q. Did you also testify at trial there?

23 A. No.

24 Q. Okay. Sort of the rules that I'm going to  
25 describe to you are probably somewhat familiar to you,

1 but they're important nevertheless. The most important  
2 thing is that we understand one another throughout the  
3 day, so, you know, if I have any doubt about your  
4 answers, I may rephrase the question in a slightly  
5 different way to make sure that I understand, and what  
6 I'm going to ask you to do is if you have any doubt  
7 about the meaning of a question, let me know that, and  
8 I'll rephrase it.

9 Is that okay?

10 A. That sounds real good.

11 Q. Good.

12 The other thing, which you just avoided doing  
13 incorrectly, is nodding, because the reporter needs to  
14 take down everything, and she's handicapped with  
15 gestures.

16 A. Yeah, I'll make sure that when I'm nodding, I  
17 also speak.

18 Q. Okay. And if you forget, one of my colleagues  
19 will probably notice if I don't and ask you to make it  
20 oral.

21 If you need to take a break, because this can be  
22 a tedious process, let me know, and I'll find a  
23 convenient stopping point, and we will do that.

24 A. I'm figuring I'm probably about 45 minutes  
25 and --

1 Q. You let me know what your tolerance is.

2 A. -- then my body clock is going to kick in.

3 Q. I see you have got two bottles of liquid in  
4 front of you, so we will do everything we can to  
5 accommodate.

6 It occurs to me that I don't have a good sense  
7 of what you do in your current position, so maybe we  
8 should start with that. What is your current title?

9 A. My current title is vice president of  
10 procurement, perishables. I oversee produce, meat,  
11 seafood, cheese purchasing, some marketing, some  
12 distribution, and I also oversee our category analysis  
13 work, which in a traditional grocery store would be  
14 called category management.

15 Q. I'm somewhat familiar with category management.  
16 Could you repeat what it's called within your --

17 A. Category analysis -- actually, we call it  
18 product and financial analysis.

19 Q. To hone in a little more on this, you mentioned  
20 as one of these categories produce. What do you do with  
21 respect to produce?

22 A. In produce, we have a -- number one, in produce,  
23 each of our 11 regions has a central distribution  
24 center, so we have 11 distribution centers. In addition  
25 to that, we have a national purchasing office, and the



1 Q. You mentioned site selection. What's the  
2 involvement of the WFLN in site selection?

3 A. Well, there's a real estate group and the  
4 regional presidents, but, you know, as we go down this  
5 discussion around organizational structure, I really  
6 think that's probably a better conversation with  
7 somebody like Walter, who's really -- you know, he's  
8 much more engaged in that. I'm really a product guy.

9 Q. Okay. In your capacity as one of these people  
10 sitting on WFLN, do you get -- personally get involved  
11 in any site selection questions?

12 A. No. I stay far away from site selection.

13 Q. I'd like to get a better picture of what goes  
14 into a Whole Foods. How many SKUs -- well, let me  
15 change that.

16 What's the range of SKUs carried in Whole Foods  
17 stores? And let's start with all products to begin  
18 with.

19 A. Well, to try and give you a fair number, a  
20 region -- a region has somewhere in the area of 70,000  
21 SKUs. A store probably -- I don't know, I probably  
22 shouldn't go there, because I'm not really 100 percent  
23 accurate on store SKU count, because they change  
24 dramatically.

25 Q. Let me take it as an estimate, and I won't hold

1     you to it. I just want to get a sense.

2           A. You're probably in the range of 25 to 30,000  
3     SKUs in a store. Produce, I can speak to that a little  
4     bit more authoritatively. It's more between 450 and 550  
5     SKUs. Seafood is probably in the area -- in the range  
6     of 125 to 150 SKUs depending on store size and freezer  
7     capacity. Meat is in that 225 to 250, and cheese gets  
8     you back upwards in that 450 to 600, but it really  
9     depends on the team delineation and specialty, which  
10    cheese is a subteam in the specialty section or in the  
11    specialty teams, and some stores roll up an assortment  
12    of charcuterie in the cheese subteam and some stores do  
13    not.

14          Q. What is charcuterie?

15          A. Roasted peppers, olives, tapanades, things of  
16    that nature.

17          Q. Would these be at sort of a bar setup?

18          A. Could be a bar, could be a prepack.

19          Q. And, I'm sorry, my note-taking failed. The --  
20    you started with 450 to 550, and the category for that  
21    was?

22          A. Produce.

23          Q. And then you went to 125 to 150?

24          A. Seafood.

25          Q. So, the next one, by implication, was meat at

1 225 to 250, and then cheese at 450 to 600?

2 A. (Witness nods head.)

3 Q. And that would be -- that would account for the  
4 vast majority of Whole Foods stores, those ranges that  
5 you gave me?

6 A. Yeah.

7 Q. I'd like to further divide that. As I  
8 understand it, products can be organic, is that correct,  
9 in the produce department?

10 A. Yes.

11 Q. Would the term "natural" be meaningful in the  
12 produce department?

13 A. Not necessarily -- no, not in the produce  
14 department.

15 Q. So, is the -- is it just conventional versus  
16 organic in terms of categories?

17 A. Yes. We -- we call out attributes on specific  
18 items, but in terms of categories, it's conventional and  
19 organic.

20 Q. And when you say attributes, you call out  
21 attributes, what do you mean?

22 A. Things that are unique relative to the SKU that  
23 would be attractive to the customer.

24 MR. BLOOM: Let's go off the record for just a  
25 moment while I confer.

1 MR. IMUS: Michael, can we take a quick break?

2 MR. BLOOM: That's absolutely fine.

3 (A brief recess was taken.)

4 (Mr. Sheinberg not present.)

5 BY MR. BLOOM:

6 Q. Mr. LaMacchia, before the break, I was going to  
7 try and begin getting a better understanding of those  
8 SKU ranges and how they break out among the various  
9 categories, and I think we had gotten to the point where  
10 we said produce has really two categories, conventional  
11 and organic. Is that right?

12 A. Correct.

13 Q. Okay. The range that you gave me on SKU count  
14 was 450 to 550 for produce. Can you break that out into  
15 the range for organic versus the range for conventional?

16 A. We're probably between 200 and 275 SKUs of  
17 organic items per store. There are some redundant SKUs.  
18 For instance, we may have organic strawberries and  
19 conventional strawberries.

20 Q. Right. But those would be different SKUs,  
21 wouldn't they?

22 A. They would be different SKUs. The same item,  
23 just different SKUs.

24 Q. Right.

25 A. So, between 200 and 275, probably closer to 200

1 SKUs organic because of the number of in-store processed  
2 items we sell as conventional even if it's an organic  
3 item because of the USDA processing laws.

4 Q. When you say "in-store processed," what does  
5 that mean?

6 A. Cut pineapple, berry cups, things of that  
7 nature, which makes up a large SKU count.

8 Q. So, when I shop at Whole Foods and buy a  
9 conventional pineapple, precut, I may, in fact, be  
10 getting an organic pineapple?

11 A. Pineapple is not a good example, but yeah,  
12 that's possible.

13 Q. And you said you sell them that way because of  
14 USDA regulations?

15 A. Right. We are not a certified processor. We  
16 are a certified retailer. So, in order to sell that  
17 stuff as organic, we would have to be certified to  
18 process organically, which would require some additional  
19 chain of custody documentation and practices.

20 Q. Are there any supermarkets that are certified  
21 organic processors?

22 A. Not to my knowledge. If you're getting that  
23 product processed by an outside vendor who's a certified  
24 processor, then you could represent it as organic.

25 Q. Then it would be shrink-wrapped or

1 cellophane-wrapped?

2 A. Yes, prepacked.

3 Q. Because if it's not, you can't preserve the  
4 chain of organic custody?

5 A. Correct. You would need to be internally --  
6 some of our bakeries are certified processors, and I --  
7 to be honest, I'm not sure about prepared foods. That  
8 doesn't fall in my area of responsibility, and I do not  
9 believe we have any prepared foods that are certified  
10 processors, but I'm not sure about that.

11 Q. Okay. And bakeries are not part of your  
12 responsibility?

13 A. No.

14 Q. Just to flesh that out a moment, with respect to  
15 the processing certification of the bakeries, is that on  
16 a store-by-store basis?

17 A. I believe the bakeries would be commissary  
18 bakeries that are certified processors.

19 Q. So -- and commissary bakery means it's serving a  
20 number --

21 A. Serving a larger population than just a store.

22 Q. Okay. Have you -- has Whole Foods ever  
23 considered becoming, with respect to produce, a  
24 certified processor?

25 A. Yes.

1 Whole Foods Market that buy meat suggest that welfare  
2 matters to them or actually state that welfare matters  
3 to them. I don't think that customers are really clear  
4 on the issue. I think that as a customer becomes more  
5 clear on the issue -- like for me, I used to eat  
6 chicken, salmon and halibut. I still eat chicken and  
7 halibut, although I narrow the time that I eat it, but I  
8 eat a ton more beef than I used to eat.

9 Q. Well, I became a vegetarian in part because I  
10 had trouble discerning which animals had humane  
11 treatment.

12 What do you do to convey some kind of animal  
13 welfare message to consumers?

14 A. You, like, set me up with a big, fat softball?

15 Q. You're welcome.

16 A. Number one is over the last few years we have  
17 convened a working group between scientists, animal  
18 welfare advocates, producers, and ourselves as  
19 retailers, and we have gone through and we have not only  
20 analyzed our base standard at Whole Foods Market, but  
21 we've created through this collaboration what we would  
22 call a gold standard for animal welfare in a production  
23 environment, and the main thesis within that group is  
24 what's best for the animals, not, you know, what's best  
25 for the consumer or what's best for the producer.

1           I mean, I think we have had to be realists in  
2   that, you know, if you end up with a product a consumer  
3   is never going to eat, which is really what a, you know,  
4   absolutely humanely raised chicken would be, you're not  
5   really moving the industry forward. So, we've  
6   maintained a level of pragmatism in the discussion, but  
7   through that, we've really, really influenced animal  
8   welfare discussions in the meat industry.

9           We have done all the species now. We have  
10   actually gone backwards with the community that has  
11   worked on this and started the discussions about  
12   creating a -- what would we call it -- a industry -- it  
13   would be an industry verification -- sort of an  
14   accreditation in the industry in order to verify that  
15   people are achieving these standards. I mean, we  
16   haven't gotten further down the road, but in defining  
17   these standards, there have been several things that  
18   have happened.

19           One is a number of the producers that have been  
20   involved have come out of there with, you know, an  
21   incredible amount of inspiration and their  
22   entrepreneurial spirit has been motivated. Number two  
23   is we have just created a vocabulary that didn't exist  
24   in the animal production world, I mean, because you have  
25   so many of the academics and scientist people with



1 the -- with the advocates, with the production people,  
2 and the production people were not always using the same  
3 language. They were using production language out of  
4 the university system, but they weren't necessarily  
5 using the welfare language.

6 I'm -- you know, if you look around, what was in  
7 the paper the other day? Burger King's percentage of  
8 their chicken was -- a percentage of their chicken was  
9 going to be humanely raised, and it was in collaboration  
10 with PETA, and I am absolutely convinced that PETA got  
11 the muscle to influence Burger King through the work  
12 that they had done on our animal welfare program. I  
13 mean, you talk to PETA, they will recognize that this  
14 program has had a tremendous amount of influence on the  
15 world.

16 Having said that, how does that communicate to  
17 our customers? Well, we have an Animal Compassion  
18 Foundation that we do a benefit for. That foundation  
19 does one thing really well, which is it finances  
20 research projects. It does another thing that's sort of  
21 an offshoot of that, which is communicates some of the  
22 development that's going on on the production side to  
23 the -- to the public. I mean, it's -- you know, the --  
24 the public would never have an exposure to some of these  
25 small-scale experiments that are demand -- one of the

1 reasons I was suggesting that we have really been  
2 concentrating on welfare in pork is because there's so  
3 many opportunities with pork for there to be a humanely  
4 raised -- absolutely gold standard humanely raised pork  
5 product that doesn't really cost any more because the  
6 efficiencies in raising a pork -- a hog in an  
7 environment that's natural to its nature is so  
8 efficient, you know, we could theoretically turn that  
9 marketplace on its side.

10           So, that type of information wouldn't normally  
11 hit the consumer, but because our foundation has a  
12 responsibility to -- through the benefit process to  
13 raise funds, it has to sort of self-promote itself, and  
14 through self-promoting, it exposes the customers to a  
15 plethora of information that's just not right at their  
16 finger -- you never see anybody talking about how you  
17 slaughter a hog in a grocery store, doesn't happen, and,  
18 you know --

19           Q. May be an appetite killer.

20           A. Well, I mean, when you -- when you ask that  
21 question, we do it.

22           Q. Right, sure.

23           A. And then, you know, just on a baseline, we have  
24 animal welfare standards that we promote as part of our  
25 overall standards.

1           Q. Do you have signage that gives out some of these  
2 messages?

3           A. Well, you know, we have run into some problems  
4 with our signage. We had had signage, but the USDA has  
5 been refining that message or forcing us to refine that  
6 message. We do have -- at this time have the content in  
7 our welfare standards on our web site, which will give  
8 you a good indication. It's not as in depth as it used  
9 to be because the USDA has wanted us to be more formal  
10 in how we verify that -- those statements, and so we've  
11 taken a step backwards and are working at this point  
12 collaboratively with the USDA, and I'm sure Roberta can  
13 speak to that more.

14           MS. LANG: FIS.

15           BY MR. BLOOM:

16           Q. That's something that you look forward to?

17           A. Yeah, we're very engaged, you know, it's  
18 imminent one way or another.

19           Q. I walked through a Whole Foods this week, and I  
20 can't remember the product, but I saw a product that had  
21 a certification of humaneness on it, and I'm trying to  
22 remember the certifying organization.

23           A. Certified humane?

24           Q. Yeah.

25           A. Yeah.

1 Q. Does that ring a bell?

2 A. Yeah, there's -- yeah, there's one organization  
3 out there now that -- there's AWI and CHS that are both  
4 doing certification. I mean, we're not necessarily --  
5 we are in intense collaboration with AWI. CHS, we're  
6 not quite as -- you know, they're more -- their  
7 standards are a little bit laxer than ours, so...

8 Q. Have you been involved -- when I say "you," I  
9 mean Whole Foods -- has Whole Foods been involved the  
10 development of standards for animal welfare?

11 A. Right. Well, that was that whole --

12 Q. I mean that transcends Whole Foods.

13 A. Right. Well, I mean, to the point I was making  
14 with where our collaboration over the last three years  
15 is going --

16 Q. Right.

17 A. -- to create an independent organization that  
18 would then hold the standard that we have mutually  
19 created. You know, it's basically a standard that we've  
20 created for ourselves, and we bore the expense of  
21 bringing all these people together, doing the research,  
22 blah-blah. The idea now of taking that standard and  
23 turning that into a third-party sort of accreditation or  
24 a third-party verifier, that's the next step and that's  
25 what we're doing right now. The reason we're doing that

1 is to try and, you know, create the hundredth monkey  
2 syndrome or push the tipping point.

3 Q. Right.

4 A. Because, you know, as to some of the  
5 conversations we had earlier around organic beef and  
6 organic chicken, I mean, as powerful as we are, we're a  
7 very small percentage of the marketplace. I mean, what  
8 are organics trending at this point, 2 percent of  
9 overall sales in any of the grocery categories, organics  
10 is, when you roll that up in terms of gross dollars,  
11 less than 2 percent, or they are forecasting 3.5 percent  
12 by 2010. So, we need -- if mission is part of our  
13 being, we need the marketplace to expand. You know, as  
14 much as it's frustrating and it's a pain in the butt and  
15 it's competition, we definitely need the marketplace to  
16 expand for us to kind of actualize our goals.

17 Q. Do your stores have signage that describes the  
18 mission of Whole Foods?

19 A. Yeah, very good signage. We have an assortment  
20 of different styles, because that's one of our core  
21 values, is decentralization and driving creativity and  
22 uniqueness, letting best practices sort of rise to the  
23 top, but absolutely, just about every store has the core  
24 values stated in the store in a very prominent way,  
25 usually in the -- early in the shop, although some

## 1 C E R T I F I C A T I O N O F R E P O R T E R

2 DOCKET/FILE NUMBER: 0710114

3 CASE TITLE: WHOLE FOODS and WILD OATS

4 DATE: APRIL 11, 2007

5

6 I HEREBY CERTIFY that the transcript contained  
7 herein is a full and accurate transcript of the notes  
8 taken by me at the hearing on the above cause before the  
9 FEDERAL TRADE COMMISSION to the best of my knowledge and  
10 belief.

11

12 DATED: 4/12/2007

13

14

15

16 SUSANNE BERGLING, RMR-CLR

17

## 18 C E R T I F I C A T I O N O F P R O O F R E A D E R

19

20 I HEREBY CERTIFY that I proofread the transcript  
21 for accuracy in spelling, hyphenation, punctuation and  
22 format.

23

24

25 DIANE QUADE